

JOHN ROSER AND WIFE	}	SEPTEMBER TERM, 1851.
VS.		
ABRAHAM SLADE ET AL.		

[WILL, CONSTRUCTION OF, ETC.—ACT TO DIRECT DESCENTS.]

A TESTATOR devised lands to his son and his heirs, "provided, nevertheless, that if" his said son "should die without heirs lawfully begotten of his body," then over. HELD—that the son took an estate in fee in the land devised to him, and which, upon his dying intestate and without issue, descended to his surviving brothers and sisters, and the children of such as were deceased, as his heirs-at-law.

A bill for the sale or partition of the real estate of an intestate must conform to the Act regulating descents, in order that the rights of election and preference secured to certain of the heirs may be enjoyed, and a demurrer to a bill for the want of this conformity will be sustained.

Though the demurrer is sustained, yet the bill will not be dismissed, because the defects, in not making the averments required by the statute, may be cured by amendment.

[The bill in this case alleges the death of Abraham Slade, seized of real estate, and leaving a last will and testament, containing the devise quoted in the opinion of the Chancellor. That Josias Slade departed this life without heirs of his body. That Abraham Slade, the testator, had eight children, five of whom were sons, one of whom, John Slade, was the father of the female complainant, and died before the testator, Abraham. The bill then proceeds to give a history of the other sons, some of whom were still living, and some had died, leaving issue, who are named, and charges that the land mentioned in the will was devised to Josias Slade for life; that it does not admit of advantageous partition among those entitled thereto; and that it will be for the advantage and interest of all parties concerned and having interest therein, to sell the same, and divide the proceeds thereof between the parties in the proportions in which they may be entitled. The bill then prays subpœnas against the defendants, who were the surviving brothers, and the children of the deceased brothers of Josias Slade, a decree for the sale of the lands, and the distribution